

VZCZCXYZ0001
OO RUEHWEB

DE RUEHJA #0122/01 0160958
ZNY CCCCC ZZH
O 160958Z JAN 07
FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 2851
INFO RUEKJCS/SECDEF WASHDC IMMEDIATE
RUENAAA/SECNAV WASHDC IMMEDIATE
RHEHNSC/NSC WASHDC IMMEDIATE
RHHJJPI/USPACOM HONOLULU HI IMMEDIATE
RHMFIUU/BUMED WASHDC IMMEDIATE
RULSAAV/NAVMEDRSCHCEN SILVER SPRING MD IMMEDIATE

C O N F I D E N T I A L JAKARTA 000122

SIPDIS

SIPDIS

E.O. 12958: DECL: 01/12/2017
TAGS: [MARR](#) [MOPS](#) [PREL](#) [TBIO](#) [AMED](#) [AMGT](#) [KFLU](#) [KTIA](#) [ID](#)
SUBJECT: NAMRU-2: PROGRESS TOWARD AN AGREED MOU TEXT

REF: 06 JAKARTA 13218 INDONESIA BEGINS NEGOTIATIONS
TOWARD NAMRU AGREEMENT

Classified By: Deputy Chief of Mission John A. Heffern,
for reasons 1.4 (b,d).

¶1. (C) Summary: U.S. and Indonesian delegations held on January 9-10 a first round of technical negotiations toward a Memorandum of Understanding for the Naval Medical Research Unit (NAMRU-2) in Jakarta. Following on the Ambassador's initial presentation of the U.S. position to a more senior group of Indonesian officials in November 2006 (reftel), these technical negotiations made considerable progress toward a joint text, subject to approval by respective capitals. Embassy is sending separately an electronic version of this text, with brackets showing outstanding differences, to Washington and Honolulu for review by relevant agencies in hopes of proceeding with a second round of technical negotiations in early February. Issues requiring further consideration at the technical level include intellectual property language generally, Indonesian provisions regarding transfer of technology and genetic resources, and Indonesian references to other international agreements on biological weapons and on biological diversity. Major differences on status and jurisdiction, as well as the Indonesian desire to designate two responsible host agencies, may have to await resolution at a higher level within the Indonesian government once negotiations on other issues have been completed. End summary.

¶2. (C) U.S. and Indonesian delegations met in Jakarta on January 9-10 to begin resolving differences between the U.S.- and Indonesia-proposed texts for a new agreement to underpin NAMRU-2's operations in Jakarta. The delegations worked completely through the respective texts in two days of meetings and produced a combined text largely free of bracketed language in most areas but still far apart on several fundamental issues. The negotiations constituted the first of several rounds of technical discussions designed to remove all but the most intractable differences before meeting again at a more senior level. The discussions were chaired by Director for North and Central American Affairs Harry Purwanto of the Indonesian Department of Foreign Affairs (DEPLU) and included representatives of the Indonesian Departments of Health, Defense and Justice, the President's office, the Indonesian Intelligence Agency (BIN), the Indonesian Armed Forces (TNI) as well as the DEPLU offices for Treaty Affairs, Diplomatic Facilities and International Security. The U.S. delegation was led by DCM Heffern and included senior officials of NAMRU and a representative from the legal staff of Pacific Command (PACOM).

¶3. (U) A combined bracketed text is being sent separately to Washington and Honolulu for review, comment and additional language. The key issues that require further attention are summarized below.

COMPLIANCE WITH OTHER INTERNATIONAL AGREEMENTS

¶4. (C) The Indonesians want specific references to several international conventions and agreements which the two Parties would undertake to uphold, i.e., the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1972), the United Nations Convention on Biological Diversity (2001) and the U.S.-Indonesian Agreement for Cooperation in Scientific Research and Technological Development (1992). The first two documents are multilateral; the third is bilateral. United States is a signatory to the BTWC and a non-party signatory to the Biodiversity Convention.

¶5. (C) The Indonesian side explained the references to the BTWC and Biodiversity Convention as particularly relevant to NAMRU's work, given NAMRU's research with pathogens, substances and Indonesian "genetic resources." Indonesia was in the process of passing national implementing legislation in compliance with the BTWC, they explained, and the Department of Health was responsible for its enforcement in Indonesia. The MOU should reflect this commitment. The Indonesian language in Article 15 (on specimens) was also designed to fulfil Indonesia's commitments on these conventions.

¶6. (C) U.S. delegation emphasized that the United States complied fully with the BTWC as well as with other

international conventions and agreements to which we were a party. U.S. compliance with the BTWC was not dependent upon the MOU and the reference to the BTWC in the MOU would not increase U.S. compliance. We proposed instead to include a general provision that nothing in the MOU should limit or detract from the Parties' obligations under any other international agreement. The Indonesian delegation accepted this additional provision without dropping the references to the two conventions and the bilateral agreement, all three of which remain bracketed.

Mission Recommendation: We will continue to argue that our inclusive language covers all relevant conventions, but in the end we might want to accept references to the BTWC and the bilateral agreement if it reassures the GOI and does us no harm. We see no way to accept the reference to the Biodiversity Convention, since we are not a party.

MANAGEMENT STRUCTURE

¶7. (C) U.S. delegation's clarifications regarding the funding-driven nature of NAMRU's research and its implications for research planning and approval made headway with the Indonesians, causing them to drop previous demands for direct NAMRU assistance. The Indonesians also seemed satisfied with U.S. delegation's explanations of the unclassified nature of the research and the accessibility of

SIPDIS research records. The Indonesian side retained language, bracketed at the U.S. request, authorizing the joint steering committee to "inspect" research progress. The U.S. delegation emphasized that NAMRU welcomed the sharing of ideas on research priorities and monitoring of progress by the joint committee but believed the term "inspect" represented too intrusive a role.

Mission Recommendation: We do not consider this a major problem and believe it can be resolved perhaps through the use of a narrow definition.

¶8. (C) A major potential problem remained, however, in the Indonesian side's inability to determine a single "executing

authority" for the GOI as NAMRU's host-country partner. NAMRU is the USG's executing authority. The Indonesians proposed a dual designation of the Departments of Health and Defense. The U.S. delegation opposed such a formulation and noted that over the past three decades the Department of Health had worked successfully with NAMRU as NAMRU's sole partner. The Indonesian side explained the new approach by noting NAMRU's affiliation with the U.S. Navy.

Mission Recommendation: The lack of clarity on the Indonesian side appears to reflect interagency disagreement within the Indonesian delegation. Resolution of this issue may require a GOI political decision.

STATUS AND JURISDICTION

¶9. (C) U.S. and Indonesian positions on the status of NAMRU personnel, which have been far apart from the outset, were briefly revisited during these negotiations but did not change. Currently U.S. NAMRU staff has Administrative and Technical (A and T) status, and are part of the U.S. Mission under Chief of Mission authority. The Indonesian language (Article 10) proposes to give A and T status only to the top two NAMRU officials, effectively downgrading the current arrangement and depriving all other U.S. staff and their families of any official status. The U.S. version would retain A and T status for all U.S. staff, maintaining the current arrangement. The U.S. delegation stressed that NAMRU staff were equivalent to all other staff and part of the U.S. Mission. The delegations did not attempt to develop joint language, and the respective Indonesian and U.S. texts for this section remain bracketed in their entirety.

¶10. (C) A related unresolved issue is the Indonesian version's provision in Article 14 for "complete jurisdiction" over the premises, property and personnel of NAMRU except for its two most senior officials. Both sides agreed the question was tied to the status issue and would have to be resolved together with it.

Embassy Recommendation: The status issue is the thorniest and will likely be the last to be resolved. In the initial round of discussions, Indonesian Presidential Advisor Dino Djalal advised both sides to leave this issue to the end. In subsequent private conversations with the DCM, Djalal explained this was an issue which the Indonesian delegation could not resolve by itself and would require a decision at a higher level. Remarks by the DEPLU chairman of these negotiations tend to confirm this. Resolution of the language in Article 11 will depend on the outcome on status.

INTELLECTUAL PROPERTY

¶11. (C) The intellectual property issue (Article 17) is complex and the most in need of additional clarification from Washington. The respective initial texts for this section were substantially different. The U.S. language reiterates the bilateral Memorandum of Understanding on Cooperation on Science and Technology on Natural Hazards signed during the visit of President Bush to Indonesia on November 20, 2006 and thus already accepted by the GOI in the context of warning buoys provided by the United States. Despite this, the Indonesian side in the NAMRU negotiations questioned the relevance of some of the provisions of this language to NAMRU's work and opined that some provisions ran counter to the principle of joint ownership of intellectual property developed through NAMRU's research.

¶12. (C) Similarly, both the Indonesian and U.S. initial versions of the draft MOU referred in the definitions of terms to the World Intellectual Property Organization (WIPO) Convention of 1967 and included an extensive list of IP property which was to be protected. Both versions originated independently of one another, but the language again was virtually identical with that previously agreed in the Hazards Cooperation MOU. The Indonesian Department of Justice representative unexpectedly bracketed the list of intellectual property despite the fact that the Indonesian

version also contained the same list. U.S. delegation pointed out that both sides had already accepted all of this language in the Hazards Cooperation MOU.

¶13. (C) The Indonesian side pointed out in several provisions of the text what it maintained was an inconsistency between NAMRU's assertion that it had no patentable technology to transfer, on the one hand, and the extensive IPR language in the U.S. version, on the other. The Indonesian side has not formally abandoned its own NAMRU MOU language, but Indonesian DOJ representatives subsequently told us they would likely proceed to negotiate from the U.S.-proposed text.

TRANSFER OF TECHNOLOGY

¶14. (C) The Indonesian delegation insisted on retaining language about the "transfer of technology" from NAMRU to Indonesian partners. Such language appeared in several sections of the Indonesian version of the draft MOU. U.S. delegation explained that NAMRU was not designed to transfer technology, that NAMRU's work in Indonesia so far had not produced a patentable technology and was unlikely to do so in the future and that the intellectual property provisions were designed to ensure that any technology jointly developed in the course of NAMRU's work was shared equitably. The Indonesian side was unwilling to replace its language with U.S.-proposed references to "the sharing of skills and/or knowledge" and to "the provision of technological expertise" which, we argued, was a more accurate description of what really occurred at NAMRU. Both the Indonesian and U.S. references remain bracketed in the new joint text.

Mission Recommendation: We hope to be able to accept the term "transfer of technology" with a note that any transfer would be consistent with the IPR language if properly caveated to reflect the reality of NAMRU's work and consistent with our IPR language. Embassy seeks clarification of the provisions in the U.S. version with an eye to tailoring the text, to the extent possible, to NAMRU's needs.

SPECIMENS

¶15. (C) Related to intellectual property is the issue of specimens. The section is informed by language from the Biodiversity Convention, to which Indonesia is a party but the United States is not. Some provisions appear acceptable with minor changes, while one asserts GOI jurisdiction over any misuse of specimens. As such, it is tied to the status issue and therefore remains bracketed. Indonesian references to "genetic resources" throughout this section remain bracketed, as do U.S. delegation-proposed alternative references to "genetic material."

Mission Recommendation: We would hope to be able to accept the term "genetic resources," since the term is more limited than our term "genetic material."

¶16. (C) In an entirely new and unwelcome development since the first NAMRU negotiations in (November), the Indonesian side also announced that specimens would be subject to "materials transfer agreement" and provided a draft text of a materials transfer agreement for inclusion as an annex to the agreement. (The text of the proposed annex will be sent to Washington separately.) The materials transfer agreement would impose limitations on the "second party" in the use of Indonesian "materials." Neither term has so far been defined in the MOU.

Embassy Request: Post needs Washington's guidance on the proposed materials transfer agreement.

DURATION, RENEWAL AND TERMINATION

¶17. (C) Differences remain over the length of the MOU's duration and provisions for its extension. The U.S. version provides for an initial term of ten years, with indefinite continuation beyond that point until terminated by either

party with one year's written notice. The Indonesian version limits the initial term to five years, with subsequent five-year terms through mutual written consent and termination with only three months' written notice. The Indonesian side was surprisingly rigid on these points, even when we offered various combinations of the Indonesian and U.S. terms. This may thus turn out to be a further issue requiring resolution at a higher level.

Embassy Recommendation: We recommend, in the end game, accepting the Indonesian language on duration, in exchange for our language on a 12-month termination period.

NEW PRESIDENTIAL DECREE MAY HAVE IMPLICATIONS

118. (C) Purwanto noted in his opening statement that a new presidential decree had been issued on December 15, 2006 concerning licensing of scientific research and development activities by foreign entities. Purwanto said the new decree, which had been issued by the Minister for Law and Human Rights, had come as a surprise and was being analyzed to for any potential impact on NAMRU. DEPLU staff subsequently suggested the decree addressed the need to regulate such activities more broadly and was not designed with NAMRU in mind, and opined that the MOU that NAMRU was pursuing would put NAMRU's research on an independent regulatory footing. Embassy has made an informal translation of the decree for NAMRU and PACOM legal counsel and will forward a copy to the Department for review as well. The new decree, which will take effect from December 15, 2007, supersedes Presidential Decree No. 100 of 1993 on the same subject. So far, the Indonesians have not proposed any changes in the text reflecting this decree.
PASCOE